

114TH CONGRESS
1ST SESSION

H. R. 4287

To restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 17, 2015

Ms. LOFGREN (for herself, Mr. FRANKS of Arizona, Mr. CÁRDENAS, Mr. COHEN, Mr. COLLINS of Georgia, Mr. DIAZ-BALART, Ms. ESHOO, Mr. FARENTHOLD, Mr. FORBES, Mr. FOSTER, Mr. GENE GREEN of Texas, Mr. GOSAR, Mr. ISRAEL, Mr. ISSA, Ms. JACKSON LEE, Mr. MILLER of Florida, Mr. KILMER, Mr. SMITH of Texas, Mr. LANCE, Mr. MASSIE, Mr. OLSON, Mr. KING of New York, Mr. POLIS, Mr. ROKITA, Mr. SCHRADER, Mr. SESSIONS, Ms. SEWELL of Alabama, Mr. SWALWELL of California, Ms. CLARK of Massachusetts, Mr. TONKO, Mr. WHITFIELD, Mr. WILLIAMS, Mr. THOMPSON of Pennsylvania, Mr. TAKANO, Mr. MARINO, Mr. JORDAN, Mr. WEBER of Texas, Mr. HUIZENGA of Michigan, Mr. AL GREEN of Texas, Mr. JEFFRIES, Mr. CALVERT, Mr. CRENSHAW, Mr. FLORES, Mr. PITTS, Mr. WEBSTER of Florida, Mr. BARTON, Mr. CHABOT, Mr. HONDA, Mr. MCGOVERN, and Mr. DENHAM) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Wireless Tax Fairness
3 Act of 2015”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) It is appropriate to exercise congressional
7 enforcement authority under section 5 of the 14th
8 Amendment to the Constitution of the United States
9 and Congress’ plenary power under article I, section
10 8, clause 3 of the Constitution of the United States
11 (commonly known as the “commerce clause”) in
12 order to ensure that States and political subdivisions
13 thereof do not discriminate against providers and
14 consumers of mobile services by imposing new selec-
15 tive and excessive taxes and other burdens on such
16 providers and consumers.

17 (2) In light of the history and pattern of dis-
18 criminatory taxation faced by providers and con-
19 sumers of mobile services, the prohibitions against
20 and remedies to correct discriminatory State and
21 local taxation in section 306 of the Railroad Revital-
22 ization and Regulatory Reform Act of 1976 (49
23 U.S.C. 11501) provide an appropriate analogy for
24 congressional action, and similar Federal legislative
25 measures are warranted that will prohibit imposing
26 new discriminatory taxes on providers and con-

1 sumers of mobile services and that will assure an ef-
2 fective, uniform remedy.

3 **SEC. 3. MORATORIUM.**

4 (a) IN GENERAL.—No State or local jurisdiction shall
5 impose a new discriminatory tax on or with respect to mo-
6 bile services, mobile service providers, or mobile service
7 property, during the 5-year period beginning on the date
8 of enactment of this Act.

9 (b) DEFINITIONS.—In this Act:

10 (1) MOBILE SERVICE.—The term “mobile serv-
11 ice” means commercial mobile radio service, as such
12 term is defined in section 20.3 of title 47, Code of
13 Federal Regulations, as in effect on the date of en-
14 actment of this Act, or any other service that is pri-
15 marily intended for receipt on, transmission from, or
16 use with a mobile telephone or other mobile device,
17 including but not limited to the receipt of a digital
18 good.

19 (2) MOBILE SERVICE PROPERTY.—The term
20 “mobile service property” means all property used
21 by a mobile service provider in connection with its
22 business of providing mobile services, whether real,
23 personal, tangible, or intangible (including goodwill,
24 licenses, customer lists, and other similar intangible
25 property associated with such business).

1 (3) MOBILE SERVICE PROVIDER.—The term
2 “mobile service provider” means any entity that sells
3 or provides mobile services, but only to the extent
4 that such entity sells or provides mobile services.

5 (4) NEW DISCRIMINATORY TAX.—The term
6 “new discriminatory tax” means a tax imposed by a
7 State or local jurisdiction that is imposed on or with
8 respect to, or is measured by, the charges, receipts,
9 or revenues from or value of—

10 (A) a mobile service and is not generally
11 imposed, or is generally imposed at a lower
12 rate, on or with respect to, or measured by, the
13 charges, receipts, or revenues from other serv-
14 ices or transactions involving tangible personal
15 property;

16 (B) a mobile service provider and is not
17 generally imposed, or is generally imposed at a
18 lower rate, on other persons that are engaged
19 in businesses other than the provision of mobile
20 services; or

21 (C) a mobile service property and is not
22 generally imposed, or is generally imposed at a
23 lower rate, on or with respect to, or measured
24 by the value of, other property that is devoted
25 to a commercial or industrial use and subject to

1 a property tax levy, except public utility prop-
2 erty owned by a public utility subject to rate of
3 return regulation by a State or Federal regu-
4 latory authority;

5 unless such tax was imposed and actually enforced
6 on mobile services, mobile service providers, or mo-
7 bile service property prior to the date of enactment
8 of this Act.

9 (5) STATE OR LOCAL JURISDICTION.—The term
10 “State or local jurisdiction” means any of the sev-
11 eral States, the District of Columbia, any territory
12 or possession of the United States, a political sub-
13 division of any State, territory, or possession, or any
14 governmental entity or person acting on behalf of
15 such State, territory, possession, or subdivision that
16 has the authority to assess, impose, levy, or collect
17 taxes or fees.

18 (6) TAX.—

19 (A) IN GENERAL.—The term “tax” means
20 a charge imposed by a governmental entity for
21 the purpose of generating revenues for govern-
22 mental purposes, and excludes a fee imposed on
23 a particular entity or class of entities for a spe-
24 cific privilege, service, or benefit conferred ex-
25 clusively on such entity or class of entities.

1 (B) EXCLUSION.—The term “tax” does
2 not include any fee or charge—

3 (i) used to preserve and advance Fed-
4 eral universal service or similar State pro-
5 grams authorized by section 254 of the
6 Communications Act of 1934 (47 U.S.C.
7 254);

8 (ii) specifically dedicated by a State or
9 local jurisdiction for the support of E-911
10 communications systems; or

11 (iii) used to preserve and advance
12 Federal telecommunications relay services
13 or State programs implementing this Fed-
14 eral mandate pursuant to title IV of the
15 Americans with Disabilities Act of 1990
16 (Public Law 101-336; 104 Stat. 327) and
17 codified in section 225 of the Communica-
18 tions Act of 1934 (47 U.S.C. 225).

19 (c) RULES OF CONSTRUCTION.—

20 (1) DETERMINATION.—For purposes of sub-
21 section (b)(4), all taxes, tax rates, exemptions, de-
22 ductions, credits, incentives, exclusions, and other
23 similar factors shall be taken into account in deter-
24 mining whether a tax is a new discriminatory tax.

1 (2) APPLICATION OF PRINCIPLES.—Except as
2 otherwise provided in this Act, in determining
3 whether a tax on mobile service property is a new
4 discriminatory tax for purposes of subsection
5 (b)(4)(C), principles similar to those set forth in sec-
6 tion 306 of the Railroad Revitalization and Regu-
7 latory Reform Act of 1976 (49 U.S.C. 11501) shall
8 apply.

9 (3) EXCLUSIONS.—Notwithstanding any other
10 provision of this Act—

11 (A) the term “generally imposed” as used
12 in subsection (b)(4) shall not apply to any tax
13 imposed only on—

14 (i) specific services;

15 (ii) specific industries or business seg-
16 ments; or

17 (iii) specific types of property; and

18 (B) the term “new discriminatory tax”
19 shall not include a new tax or the modification
20 of an existing tax that either—

21 (i)(I) replaces one or more taxes that
22 had been imposed on mobile services, mo-
23 bile service providers, or mobile service
24 property; and

1 (II) is designed so that, based on in-
2 formation available at the time of the en-
3 actment of such new tax or such modifica-
4 tion, the amount of tax revenues generated
5 thereby with respect to such mobile serv-
6 ices, mobile service providers, or mobile
7 service property is reasonably expected to
8 not exceed the amount of tax revenues that
9 would have been generated by the respec-
10 tive replaced tax or taxes with respect to
11 such mobile services, mobile service pro-
12 viders, or mobile service property; or

13 (ii) is a local jurisdiction tax that may
14 not be imposed without voter approval,
15 provides for at least 90 days' prior notice
16 to mobile service providers, and is required
17 by law to be collected from mobile service
18 customers.

19 **SEC. 4. ENFORCEMENT.**

20 Notwithstanding any provision of section 1341 of title
21 28, United States Code, or the constitution or laws of any
22 State, the district courts of the United States shall have
23 jurisdiction, without regard to amount in controversy or
24 citizenship of the parties, to grant such mandatory or pro-
25 hibitive injunctive relief, interim equitable relief, and de-

1 claratory judgments as may be necessary to prevent, re-
2 strain, or terminate any acts in violation of this Act.

3 (1) JURISDICTION.—Such jurisdiction shall not
4 be exclusive of the jurisdiction which any Federal or
5 State court may have in the absence of this section.

6 (2) BURDEN OF PROOF.—The burden of proof
7 in any proceeding brought under this Act shall be
8 upon the party seeking relief and shall be by a pre-
9 ponderance of the evidence on all issues of fact.

10 (3) RELIEF.—In granting relief against a tax
11 which is discriminatory or excessive under this Act
12 with respect to tax rate or amount only, the court
13 shall prevent, restrain, or terminate the imposition,
14 levy, or collection of not more than the discrimina-
15 tory or excessive portion of the tax as determined by
16 the court.

17 **SEC. 5. GAO STUDY.**

18 (a) STUDY.—The Comptroller General of the United
19 States shall conduct a study, throughout the 5-year period
20 beginning on the date of the enactment of this Act, to
21 determine—

22 (1) how, and the extent to which, taxes imposed
23 by local and State jurisdictions on mobile services,
24 mobile service providers, or mobile property, impact
25 the costs consumers pay for mobile services; and

1 (2) the extent to which the moratorium on dis-
2 criminatory mobile services taxes established in this
3 Act has any impact on the costs consumers pay for
4 mobile services.

5 (b) REPORT.—Not later than 6 years after the date
6 of the enactment of this Act, the Comptroller General shall
7 submit, to the Committee on the Judiciary of the House
8 of Representatives and the Committee on the Judiciary
9 of the Senate, a report containing the results of the study
10 required under subsection (a) and shall include in such
11 report recommendations for any changes to laws and regu-
12 lations relating to such results.

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